IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :
THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 1382 of 2007(C)

CC.45/2005 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
.....

REVN. PETITIONER: PETITIONERS
---

1. N.I.LAZER, S/O. SRI. IYPE,
NEYYAN HOUSE, WADAKKANCHERY, TRICHUR DISTRICT.

2. THERESA, W/O. LAZER,
NEYYAN HOUSE, WADAKKANCHERY, TRICHUR DISTRICT.

3. ANTO N.L., S/O. SRI. LAZER,
NEYYAN HOUSE, WADAKKANCHERY, TRICHUR DISTRICT.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAJASEKHARAN NAIR

RESPONDENTS: RESPONDENT/ACCUSED
---

1. THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI.

2. THE INSPECTOR OF POLICE,
CENTRAL BUREAU OF INVESTIGATION, "A" WING,
3RD FLOOR, RAJAJI BHAVAN, BASANT NAGAR,
CHENNAI.

3. RONALD B. FERNANDEZ, S/O. BENSIGAR,
THOTTUMUGHAM HOUSE, CHENNIPUZHA DESOM,
CHANGANACHERRY, KOTTAYAM DISTRICT.

BY ADV. SRI.P.PARAMESWARAN NAIR, CGC
SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.ANIL K.MOHAMMED
SRI.RAJU RADHAKRISHNAN
SRI.S.SREEKUMAR,S.C.,C.B.I.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON 16/08/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

....

Crl.R.P. 1382 of 2007

.....

Dated, this the 16th day of August 2007

O R D E R

In this Revision filed under Sections 397 and 401 Cr.P.C. the revision petitioners who are the father, mother and brother respectively of one Thomas who succumbed to gun shot injury sustained by him at 8 p.m. on 25-4-2000, challenge the order dated 30-10-2006 passed by the chief Judicial Magistrate, Ernakulam rejecting the prayer made by the revision petitioner herein for further investigation under Sec. 173 (8) Cr.P.C.

2. I heard Advocate Sri.K.Ramkumar, the learned counsel appearing for the revision petitioner and Advocate Sri. S. Sreekumar, the learned Standing Counsel appearing for the C.B.I. and perused the relevant records.

3. The learned counsel appearing for the revision petitioners made the following submissions before me in support of the revision:-

Radhakrishnan, the then Superintendent of Police, State Rapid Action Force (SRAF), Malappuram who was questioned by C.B.I. as C.W.9 is the person is who is suspected by the revision petitioners as the person behind the brutal murder of Thomas. The said Radhakrishnan's daughter was in love with one Hakkim and deceased Thomas who was running a Video Shop at Cheruthuruthy was in possession of Video Cassettes involving their love affair.

Hence, Radhakrishnan who could not lay his hands on those cassettes had a motive to annihilate Thomas. The fatal gun shot was sustained by Thomas from his own Video shop at the hands of Ronald B. Fernandez, the 3rd respondent herein who was none other than the gunman of the said Radhakrishnan. The F.S.L. report goes to show that the revolver in question when fired could produce tattoo marking up to 150 cms. But in the instant case the revolver had discharged bullet from a distance of only 120 cms. Still there was no tattoo markings noted. Soon after the occurrence Radhakrishnan had been to the scene of crime and had taken into custody his service revolver used by his gunman and had removed the same to his house at Cheruthuruthy. It was about 1 ½ hours after the occurrence that the service revolver used for firing the fatal shot was recovered by the police from the possession of Rajeev, the son of Radhakrishnan from his house. The fact that soon after the occurrence, Radhakrishnan hurriedly removed the weapon of offence to his custody shows his anxiety to screen himself from punishment. He had retained the service revolver in his house for nearly 1 ½ hours. The C.B.I. has not conducted any investigation to find out whether there were fingerprints of Radhakrishnan on the said revolver. The court below has not considered the detailed objections filed by the revision petitioners to the final report filed by the C.B.I. The C.B.I. is attempting to shield and protect the said Radhakrishnan who is a prime suspect in the case. The request for further investigation made by the revision petitioners ought to have been granted by the court below in the light of the decisions of the Apex Court in **Zahira Habibulla Sheikh** (5) **v**. **State of Gujarat** -2004 (4) **SCC** 1458 **and Zahira Habibulla Sheikh** (5) **v**.

State of Gujarat - 2006 (3) **SCC** 374).

4. I am afraid that I cannot agree with the above submissions. What is unravelled by the investigation conducted by the C.B. I is the following:-

During the year 2000 the accused in the case namely Reynold B.Fernandez was working as headconstable (F-154) in the State Rapid Action Force (SRAF), Pandikkad. He was attached as the security guard to Radhakrishnan (CW9) who was the Commandant (SRAF), Pandikkad. The said Reynold was supplied with a 0.380 cal. rim Ruger Police Service Revolver with butt No. 161-12725 and 12 live cartridges in his official capacity. Deceased Thomas who was the son of the first revision petitioner herein was running a Video Shop under the name and style **Natham Videos** near Chungam at Cheruthuruthy in a room bearing Building No. IX/314 of Vallathol Nagar Panchayat. On 25-4-2000 at about 7.30 p.m. Reynold B. Fernandez visited Natham Video shop for purchase of audio cassettes from the deceased with whom he had previous acquaintance. Reynold was at that time carrying the service revolver in question which was loaded 5 rounds. Deceased Thomas was present in the shop at that time and C.W.6 (one Ali) who was a close associate of the deceased was also present in the Video Shop at that time. The deceased requested Reynold to show him the service Revolver. Reynold unloaded the Revolver by removing five cartridges and handed over the revolver to deceased Thomas. After inspecting the revolver the deceased returned it to Reynold. Thereafter Reynold re-loaded the revolver with the five rounds and placed it on the counter (table) . The deceased was at that time sitting on a chair near the counter (table). When Reynold placed the

loaded revolver on the table the deceased tried to take the firearm. Considering the great risk involved, Reynold suddenly tried to snatch the revolver in which process the trigger was accidentally pressed by Reynold leading to the discharge of a projectile from the revolver hitting on the face of Thomas causing a lacerated penetrating entry wound 0.70 cms. in diametre circular over the left side of his face at a spot 0.05 cms outer to the angle of the mouth and leaving an exit lacerated wound 1.5. x 0.8 cms on the back side of the neck with irregular and averted margins. Reynold realising that his rash act of attempting to re-possess the firearm had cost the precious life of his friend came out of the Video Shop, walked towards the road outside and made an attempt to commit suicide by firing two shots on his abdomen with the same service revolver. Thomas who had sustained the fatal gunshot injury succumbed to the injuries at about 11 p.m. on the same day. Radhakrishnan (CW9) who was residing in his own house called Prasanth at Cheruthuruthy, on being informed of the occurrence, suddenly rushed to the scene. Finding that his gunman was lying wounded on the road with his service revolver lying nearby, Radhakrishnan took the firearm into custody by way of safety and took it to his residence. On his own direction the service revolver was seized by the local police from his house at 9.30 p.m. in the same night. It was his son Rajeev who had handed over the service revolver to the investigating police officer who seized the weapon as per a seizure mahazar. The hand wash of the deceased and Reynold showed the presence of Nitrate indicating that the weapon was handed by both of them. In the meanwhile, revision petitioners 1 and 2 had filed a writ petition before this Court as W.P.(C) No.

23041 of 2003 for a direction to entrust the investigation to the C.B.I. and the said request was allowed by this Court as per Annexure A judgment dated 1-8-2003. The C.B.I. has conducted a very meticulous investigation to rule out the possibility of homicide and Radhakrishnan (CW9) being the person behind the death of Thomas. Deceased Thomas had a height of 171 cms. as revealed by the postmortem certificate. The courter or the table on which the loaded weapon was kept by Reynold has a length of 1.5 metres, width of 50 cms. and height of 90 cms. The seat of the chair on which deceased Thomas was sitting was having a height of 44 cms. from the floor. Thus, the conclusion that the gun shot must have struck Thomas while he was in a sitting posture and at a time when the loaded weapon was on the table and in the course of a struggle for the weapon is quite probable. The C.B.I. has also investigated into the motive alleged by the revision petitioners and nothing has been revealed to show that the deceased was having any electronic record of the love affair of Radhakrishnan's daughter or Radhakrishnan was harbouring any enmity or hostility towards the deceased so as to infer that the death of deceased was a pre-planned and engineered one. 120 cms. which is the distance between the firearm and the body of deceased Thomas is only two arms length and if the firing of the revolver took place in the manner concluded by the C.B.I. the incident could very well take place in that manner. 150 cms. which is the maximum distance within which the revolver in question could produce tattooing marks, has been measured under simulated conditions in the laboratory. Absence of tattooing marks on the face of the deceased does not render the investigation suspect. Tattooing or peppering is the

manifestation of a gun shot injury due to the unburnt or semi burnt nitrate and in the manner in which the occurrence is said to have taken place, the absence of tattooing does not falsify the occurrence in the manner concluded by the C.B.I. The conclusion reached by the investigating agency on the basis of the statements of C.W.6 (K.P.Ali) who was in the Video Shop and the neighbouring shop keepers namely Shaheer (C.W.1), Kalandan (C.W.2), Venugopal (C.W.3) and Nazar (C.W.4) all convergingly confirm prima facie the theory that death of Thomas was a sheer accident on account of the rash and negligent act of Reynold in instinctively attempting to snatch the loaded weapon for fear of it being mishandled by the deceased who was not familiar with such firearms

5. It is really unfortunate that Thomas met with his death in a totally unexpected moment and he deserves all sympathy. But that is no reason to entertain an unfounded suspicion against Radhakrishnan. The conclusion reached by the courts below that no case has been made out for further investigation under Sec. 173 (8) Cr.P.C. cannot be faulted and is accordingly confirmed.

In the result, this Revision is dismissed.

V. RAMKUMAR, JUDGE

ani.